

CALIFORNIA COASTAL COMMISSION

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Items 14e, 14f

Staff: CAC-SF
Staff Report: April 25, 2005
Hearing Date: May 12, 2005

STAFF REPORT AND FINDINGS FOR NOTICE OF VIOLATION AND CEASE AND DESIST ORDER

CEASE AND DESIST ORDER: CCC-05-NOV-04 and CCC-05-CD-06

RELATED VIOLATION FILE: V-4-05-031

PROPERTY LOCATION: 26520 Latigo Shore Drive, Malibu, Los Angeles County (APN 4460-019-145) (**Exhibit 1**)

DESCRIPTION OF PROPERTY: A .20-acre parcel located between the seaward side of Latigo Shore Drive and the beach, containing a 3,519 square-foot single-family residence built on an artificial fill slope that fronts an approximately 61 linear foot-long stretch of sandy beach

PROPERTY OWNER: Sepideh Hodayun

PERSON SUBJECT TO THIS ORDER: Sepideh Hodayun and Michael Hodayun

VIOLATION DESCRIPTION: Unpermitted grading (cut and fill) of the beach and construction of a rock revetment using mechanized equipment.

SUBSTANTIVE FILE DOCUMENTS: 1. Executive Cease and Desist Order No. ED-05-CD-02;

2. Notice of Violation and Cease and Desist Order files No. CCC-05-NOV-04 and CCC-05-CD-06;
3. Coastal Development Permit No. 4-97-168 and 5-88-794;
4. Amendment Application No. 4-97-168-A1, 4-97-168-A2;
5. Exhibits 1 through 20.

CEQA STATUS:

Exempt (CEQA Guidelines (CG) §§ 15060(c)(2)), and Categorically Exempt (CG §§ 15061(b)(2), 15037, 15038, and 15321).

I. SUMMARY OF STAFF RECOMMENDATION

This violation involves the construction of a rock revetment on the sandy beach seaward of the Homayun residence located at 26520 Latigo Shore Drive in Malibu ("subject property"). A contractor acting on behalf of Sepideh Homayun and her husband, Michael Homayun (hereinafter, Sepideh and Michael will be collectively referred to as "the Homayuns"), arranged for the use of mechanized equipment to remove sand from the beach, creating at least one large trench. He then constructed a revetment by placing rocks in the trench and replacing the sand. This activity constitutes development, as defined in Coastal Act Section 30106, and requires a Coastal Development Permit ("CDP") pursuant to Coastal Act Section 30600. The Homayuns did not apply for or obtain a CDP from the Commission. Furthermore, the revetment violates conditions of previously issued CDP No. 5-88-794 and 4-97-168-A2. In particular, CDP No. 4-97-168-A2 provided for a deed restriction prohibiting the use of shoreline protective devices on the subject property.

The subject property consists of a .20-acre beachfront parcel located on Latigo Shore Drive, southwest of the Latigo Shore Drive/Pacific Coast Highway intersection in Malibu. A 3,519 square foot single-family residence built on caisson foundations is located on the property. Between the residence and the beach is a slope comprised of fill materials that were imported and placed on the beach by Caltrans in approximately 1927. The property fronts an approximately 90 linear foot stretch of beach, known as Latigo Beach.

The unpermitted development on the subject property addressed by the Order consists of grading (cut and fill) and construction of a rock revetment on the sandy beach below the residence. In addition, the construction of the rock revetment involved the unpermitted use of mechanized equipment on the beach.

The Coastal Commission has jurisdiction to take enforcement action to remedy these violations because the violation involves development that is prohibited by a CDP previously approved by the Commission. In addition, it appears that the rock revetment may be located on public

tidelands that remain subject to the Commission's jurisdiction even after certification of a local coastal program.

On March 3, 2005, enforcement staff at the South Central Coastal District Office received a report, including photographs, from an anonymous source that mechanized equipment was being used on the sandy beach area seaward of the subject residence. In the photographs, a bulldozer is clearly visible on the beach, removing sand and creating a large trench. Rocks were then placed in the trench to form the revetment. Staff visited the site later that day and confirmed that this unpermitted development was in place. By the tracks still present on the sandy beach, it was evident that the work had recently been performed. To prevent further unpermitted development, and pursuant to his authority under Coastal Act Section 30809, the Executive Director issued a Notice of Intent to Issue an Executive Director Cease and Desist Order ("EDCDO NOI") to Sepideh Homayun as the owner of record of the subject property. When no satisfactory response was received, as required by Coastal Act Section 30809(b) and as defined by Section 13180 of the Commission's Regulations, the Executive Director issued Executive Cease and Desist Order No. ED-05-CD-01 ("EDCDO"). The EDCDO directed Sepideh Homayun to immediately cease and desist all unpermitted development activity at the subject property and to contact Commission staff to discuss removal and restoration. The EDCDO also notified Sepideh Homayun, as required by Coastal Act Section 30812(g), of the potential for recordation of a Notice of Violation.

In order to obtain removal of the unpermitted development, on March 15, 2005, the Executive Director issued a Notice of Intent to Record a Notice of Violation of the Coastal Act and to Commence Cease and Desist Order and Restoration Order Proceedings ("CDO NOI") to Sepideh Homayun. On March 18, 2005, Alan Block contacted staff by telephone and stated that both Michael and Sepideh Homayun had retained him to represent them in this matter. Upon speaking with Mr. Block, staff learned that, although Sepideh Homayun owns the subject property, Michael Homayun authorized the grading and construction of the revetment. Therefore, on April 8, 2005, the Executive Director issued a separate CDO NOI for Michael Homayun. The Homayuns submitted a joint Statement of Defense on April 13, 2005.

Staff recommends that the Commission approve Cease and Desist Order No. CCC-05-CD-06 ("Order", as described below) directing the Homayuns to: 1) cease and desist from conducting any further development on the subject property without a Coastal Development Permit, 2) cease and desist from conducting development that violates Coastal Development Permits No. 5-88-794 and No. 4-97-168, 3) remove the rock revetment in accordance with the terms and conditions of the Order, and 4) restore the disturbed sandy beach area seaward of the residence through restorative grading. Although Sepideh Homayun owns the subject property, Michael Homayun is also subject to this Order because he authorized the grading and construction of the revetment.

Staff also recommends that the Commission find that a violation of the Coastal Act has occurred on the subject property. The Homayuns violated the Coastal Act by undertaking development on the subject property without obtaining a CDP, and in direct conflict with the special conditions of existing CDPs for the property, No. 5-88-794 and No. 4-97-168-A2. On March 15, 2005, the

Executive Director notified the Homayuns of his intent to record a Notice of Violation, as required under Coastal Act Section 30812. The Homayuns objected to the recordation of a Notice of Violation by submitting a written objection by the April 5, 2005 deadline. If the Commission finds that a violation has occurred, the Executive Director shall record a Notice of Violation at the Los Angeles County Recorder's Office.

II. HEARING PROCEDURES

A. Cease and Desist Order

The procedures for a hearing on a proposed Cease and Desist Order are set forth in Section 13195 of the California Code of Regulations (CCR), Title 14, Division 5.5, Chapter 5, Subchapter 8.

For a Cease and Desist Order hearing, the Chair shall announce the matter and request that all alleged violators or their representatives present at the hearing identify themselves for the record, indicate what matters are already part of the record, and announce the rules of the proceeding including time limits for presentations. The Chair shall also announce the right of any speaker to propose to the Commission, before the close of the hearing, any question(s) for any Commissioner, in his or her discretion, to ask of any person, other than the violator or its representative. Staff shall then present the report and recommendation to the Commission, after which the alleged violator(s) or their representative(s) may present their position(s) with particular attention to those areas where an actual controversy exists. The Chair may then recognize other interested persons after which staff typically responds to the testimony and to any new evidence introduced.

The Commission will receive, consider, and evaluate evidence in accordance with the same standards it uses in its other quasi-judicial proceedings, as specified in CCR section 13185 and 13186 incorporating by reference section 13065. The Chair will close the public hearing after the presentations are completed. The Commissioners may ask questions of any speaker at any time during the hearing or deliberations, including, if any Commissioner chooses, any questions proposed by any speaker in the manner noted above. Finally, the Commission shall determine, by a majority vote of those present and voting, whether to issue the Cease and Desist Order, either in the form recommended by the Executive Director, or as amended by the Commission. Passage of a motion, per staff recommendation or as amended by the Commission, will result in issuance of the order.

B. Notice of Violation

The procedures for a hearing on the Executive Director's proposed recordation of a notice of violation are set forth in Coastal Act Section 30812 (c) and (d) as follows:

(c) If the owner submits a timely objection to the proposed filing of the notice of violation, a public hearing shall be held at the next regularly scheduled commission meeting for which adequate public notice can be provided, at which the owner may present evidence to the

commission why the notice of violation should not be recorded. The hearing may be postponed for cause for not more than 90 days after the date of the receipt of the objection to recordation of the notice of violation.

(d) If, after the commission has completed its hearing and the owner has been given the opportunity to present evidence, the commission finds that, based on substantial evidence, a violation has occurred, the executive director shall record the notice of violation in the office of each county recorder where all or part of the real property is located. If the commission finds that no violation has occurred, the executive director shall mail a clearance letter to the owner of the real property.

The Commission shall determine, by a majority vote of those present and voting, whether a violation has occurred. Passage of a motion, per staff recommendation or as amended by the Commission, will result in the Executive Director's recordation of a Notice of Violation in the Los Angeles County Recorder's Office.

III. STAFF RECOMMENDATION

1.A. Motion re: Notice of Violation:

I move that the Commission find that a violation of the Coastal Act has occurred, as described in the staff recommendation for CCC-05-NOV-04.

1.B. Recommendation of Approval:

Staff recommends a **YES** vote. Passage of this motion will result in the Executive Director recording Notice of Violation No. CCC-05-NOV-04. The motion passes only by an affirmative vote of the majority of Commissioners present.

1.C. Resolution That a Violation of the Coastal Act Has Occurred:

The Commission hereby finds that a violation of the Coastal Act has occurred, as described below, and adopts the findings set forth below on the grounds that development has occurred without a coastal development permit and development has occurred that is inconsistent with a permit previously issued by the Commission, in violation of the Coastal Act.

2.A. Motion re: Cease and Desist Order:

I move that the Commission issue Cease and Desist Order No. CCC-05-CD-06, pursuant to the staff recommendation.

2.B. Recommendation of Approval:

Staff recommends a **YES** vote. Passage of this motion will result in the issuance of Cease and Desist Order CCC-05-CD-06. The motion passes only by an affirmative vote of a majority of Commissioners present.

2C. Resolution to Issue Cease and Desist Order:

The Commission hereby issues Cease and Desist Order No. CCC-05-CD-06, as set forth below, and adopts the findings set forth below on grounds that development has occurred without a coastal development permit, development has occurred that is inconsistent with a permit previously issued by the Commission, in violation of the Coastal Act, and the requirements of the Order are necessary to ensure compliance with the Coastal Act.

IV. FINDINGS FOR NOTICE OF VIOLATION CCC-05-NOV-04 AND CEASE AND DESIST ORDER CCC-05-CD-06

A. Permit History

1. CDP No. 5-88-794

On December 13, 1988, the Commission approved CDP 5-88-794 subject to ten special conditions. The permit authorized the subdivision of a .85-acre parcel (APN 4460-019-026) into three parcels (APNs 4460-019-143, -144, -145) and the construction of three single-family residences (**Exhibit 2**). The subject property (APN 4460-019-145) is a .20-acre parcel that was created pursuant to this subdivision. Special conditions relevant to CCC-05-CD-06 are described in Section D2 below.

The permit runs with the land and is binding on Sepideh Homayun as a successor owner. Moreover, a deed restriction and an accepted offer to dedicate a lateral access easement were recorded pursuant to the permit (**Exhibits 3-5**). Therefore, Sepideh Homayun had notice of the restrictions on development when she purchased the subject property on April 30, 2002.

2. CDP No. 4-97-168-A2

Although CDP No. 5-88-794 authorized the construction of a single-family residence on the subject property, the residence was never built. In 1997, the previous owner applied for a coastal development permit for a residence, in accordance with the deed restriction recorded pursuant to Special Condition 7 of CDP No. 5-88-794, requiring a new coastal development permit for all future development (all development not included in CDP No. 5-88-794). The Commission approved CDP No. 4-97-168 on November 5, 1997, subject to conditions, authorizing the construction of the 3,406 square-foot single-family residence that currently exists on the property (**Exhibit 6**).

The permit, approved in 1997, incorporated the conditions of CDP No. 5-88-794 by reference, stating:

IV. Note

The standard and special conditions attached to the Permit for the subdivision that created the subject parcels [5-88-794 Lachman] remain in effect and are attached for reference as Exhibit 7.

Moreover, when CDP No. 4-97-168 was amended on April 12, 2002, a revised condition prohibiting shoreline protection was added as follows¹:

*(5) No shoreline protective devices shall be constructed, now or in the future, for the purpose of protecting the residential development approved pursuant to coastal development permits 4-97-168 and 4-97-169 ... in the event that these structures are threatened with imminent damage or destruction from waves, erosion, storm conditions, or other natural hazards in the future and by acceptance of this permit, the applicant hereby waives, on behalf of itself and all successors and assigns, any rights to construct such devices that may exist under [Coastal Act] Section 30235 (**Exhibit 7**).*

A. Prior to the issuance of the coastal development permit, the applicant shall execute and record a deed restriction...incorporating all of the above terms of this condition.

The previous owner recorded the above-mentioned deed restriction on March 25, 2002, in accordance with the amended permit, CDP No. 4-97-168-A2 (**Exhibit 8**). As with the deed restrictions recorded in accordance with CDP No. 5-88-794, this document runs with the land and binds Sepideh Homayun as a successor owner.

Both CDP No. 5-88-794 and No. 4-97-168-A2 run with the land and bind all successor owners. Therefore, Sepideh Homayun is bound by the terms and conditions of both permits. Sepideh Homayun is also bound by the two deed restrictions and offer to dedicate recorded prior to issuance of the permits or permit amendments: 1) the deed restriction prohibiting shoreline protective structures; 2) the deed restriction assuming the risk of damage to the property from shoreline erosion, flooding and bluff erosion and requiring subsequent coastal development permits for future development; and 3) the offer to dedicate the lateral access easement seaward of the residence. These recorded documents were in the chain of title before Sepideh Homayun purchased the property, thus putting her on notice that development would require a coastal development permit prior to construction and that shoreline protection was prohibited.

B. History of Violations

1. Description of Subject Property

¹ This was the second amendment to CDP No. 4-97-168. The previous amendment, 4-97-168-A1 increased the square footage of the residence 50 square feet to 3,456 square feet. 4-97-168-A1 was deemed immaterial and became effective on June 16, 1999. Staff is unaware of any authorization for the apparent increase in the size of the residence from 3,456 square feet to 3,519 square feet.

The subject property consists of a .20-acre beachfront parcel located on Latigo Shore Drive, southwest of the Latigo Shore Drive/Pacific Coast Highway intersection in Malibu. The parcel extends approximately 61 linear feet across the seaward side of Latigo Shore Drive and 143 linear feet from the seaward edge of the pavement of Latigo Shore Drive to the sandy beach below. A 3,519 square foot single-family residence built on caisson foundations is located on the property. Between the residence and the beach is a slope comprised of fill materials that were imported and placed on the beach by Caltrans in approximately 1927.

2. Initial Violation Report and EDCDO

On March 3, 2005, enforcement staff at the Commission's South Central Coast District office received a report, including photographs, from an anonymous source that mechanized equipment was being used on the sandy beach seaward of the Homayun residence (**Exhibit 9**). The photographs show a bulldozer removing sand from the beach, creating a trench. Rocks placed in the trench are clearly visible in the photographs, presumably forming the toe of the rock revetment. Staff visited the site later that day and observed tread marks from mechanized machinery, two large mounds of sand on the beach at the base of the artificial fill slope on the subject property, and a rock revetment (**Exhibit 10**). Commission staff confirmed that the reported unpermitted development was in place. By the tracks still present on the sandy beach, it was evident that the work had recently occurred. On March 4, 2005, in an effort to halt any further unpermitted development activity and resource damage, the Executive Director issued a Notice of Intent to Issue an Executive Director Cease and Desist Order ("EDCDO NOI") to Sepideh Homayun, which was hand-delivered to the Homayun residence by Commission staff and sent via regular and certified mail on March 4, 2005 (**Exhibit 11**).

The EDCDO NOI stated, "I [Executive Director] intend to issue a Cease and Desist Order against you unless you respond to this letter in a 'satisfactory manner'...no later than 5:00 pm today." Neither Sepideh or Michael Homayun, nor an agent or representative speaking on their behalf, responded in a "satisfactory manner", as defined in Coastal Act Section 30809(b) and Section 13180 of the Commission's Regulations, before the 5:00 pm deadline.² Consequently, on March 4, 2005, pursuant to his authority under Coastal Act Section 30809, the Executive Director issued Executive Cease and Desist Order No. ED-05-CD-02 (EDCDO) (**Exhibit 12**). The EDCDO was also hand-delivered to the Homayun residence and sent via regular and certified mail.

3. Notice of Intent to Record a Notice of Violation of the Coastal Act and to Commence Cease and Desist Order and Restoration Order Proceedings

² Coastal Act Section 30809(b) states:

The Cease and Desist Order shall be issued only if the person or agency has failed to respond in a satisfactory manner to an oral notice given in person or by telephone, followed by a written confirmation, or a written notice given by certified mail or hand delivered to the landowner....

Commission staff attempted to give Sepideh Homayun both oral notice and hand-delivered written notice when they went to the residence. However, the Homayuns were not home when staff delivered the Notice of Intent and the Executive Cease and Desist Order, so oral notice was impossible. Instead, the documents were delivered to the residence by staff.

The EDCDO directed Sepideh Homayun to cease from conducting or maintaining unpermitted development on the subject property and not to remove the revetment without further instruction from Commission staff, due to the fact that the revetment was installed through the use of mechanized equipment on the beach and that an unknown quantity of rock was placed in trenches of unknown depth. The EDCDO requires that removal be conducted in accordance with the terms and conditions of a Commission-approved order, to ensure appropriate removal and restoration procedures, to ensure compliance with the policies of Chapter 3 of the Coastal Act, and to minimize additional impacts to the beach.

On March 15, 2005, in order to address appropriate removal of the violation, the Executive Director issued a Notice of Intent to Record a Notice of Violation of the Coastal Act and to Commence Cease and Desist Order and Restoration Order Proceedings ("CDO NOI") to Sepideh Homayun via regular and certified mail (**Exhibit 13**).³ On March 18, 2005, staff received a telephone call from Alan Block, stating that he had been retained to represent both Michael and Sepideh Homayun in this matter.⁴ Upon discussion with Mr. Block, staff learned that, although Sepideh Homayun owns the subject property, Michael Homayun authorized the grading and construction of the revetment. Therefore, on April 8, 2005, the Executive Director issued a separate CDO NOI for Michael Homayun (**Exhibit 15**).

4. Objection to Recordation of Notice of Violation and Statement of Defense

The CDO NOI stated:

If you object to the recordation of the Notice of Violation in this matter and wish to present evidence on the issue of whether a violation has occurred, you must respond in writing... no later than April 5, 2005.

On April 4, 2005, staff received a letter from Mr. Block objecting to the recordation of a Notice of Violation, on behalf of the Homayuns (**Exhibit 16**).

In addition, the CDO NOI stated:

In accordance with Sections 13181(a) and 13191(a) of the Commission's regulations, you have the opportunity to respond to the Commission staff's allegations as set forth in this [CDO NOI] by completing the enclosed Statement of Defense form. The Statement of Defense form must be returned to the Commission's San Francisco office... no later than April 5, 2005.

³ Commission staff has determined that all relief sought in this enforcement action can be accomplished through a cease and desist order, and that consequently, no restoration order is required.

⁴ Mr. Block alerted staff that Sepideh Homayun's name appeared on the CDO NOI as "Homayun Sepideh", but that the Homayuns had received the CDO NOI and understood that it pertained to them. Staff corrected the mistake and sent an amended copy of the CDO NOI to Sepideh Homayun on April 8, 2005 (**Exhibit 14**).

As a courtesy to Sepideh Homayun, staff agreed to extend the deadline for submittal of her Statement of Defense until April 8, 2005. Michael Homayun received a separate CDO NOI, with an April 28, 2005 deadline for submittal of a Statement of Defense. However, Mr. Block agreed to submit a joint Statement of Defense on behalf of both Sepideh and Michael Homayun. In recognition of this offer and to provide Mr. Block with adequate time to complete a joint statement, staff agreed to further extend the deadline for to submittal of Sepideh Homayun's Statement of Defense to April 12, 2005 (**Exhibit 17**). Staff received the joint Statement of Defense on April 13, 2005 (**Exhibit 18**).

Repeated attempts were made to resolve this matter administratively. Unfortunately, these efforts have been unsuccessful.

C. Description of Unpermitted Development

Unpermitted development located on the subject property consists of grading (cut and fill) of the beach and construction of a rock revetment on the beach. In addition, the unpermitted construction of the revetment involved the unpermitted use of mechanized equipment on the beach.

D. Basis for Issuance of Cease and Desist Order

The statutory authority for issuance of this Cease and Desist Order is provided in Coastal Act Section 30810, which states:

(a) If the commission, after public hearing, determines that any person...has undertaken, or is threatening to undertake, any activity that (1) requires a permit from the commission without securing the permit or (2) is inconsistent with any permit previously issued by the commission, the commission may issue an order directing that person ... to cease and desist.

(b) The cease and desist order may be subject to such terms and conditions as the commission may determine are necessary to ensure compliance with this division, including immediate removal of any development or material or the setting of a schedule within which steps shall be taken to obtain a permit pursuant to this division.

The Commission is authorized to issue CCC-05-CD-06 pursuant to Section 30810(a)(1) because the work conducted on the subject property constitutes development as defined in Coastal Act Section 30106 (as discussed below) and therefore requires a CDP under Coastal Act Section 30600. No CDP has been issued for the development. Additionally, Section 30810(a)(2) authorizes the Commission to issue CCC-05-CD-06 for actions taken inconsistent with permits issued by the Commission. Here, the development was undertaken in direct violation of the Special Conditions of CDP No. 5-88-794 and No. 4-97-168-A2.

Furthermore, grading the beach and constructing the revetment constitute unpermitted development that is inconsistent with the policies of Chapter 3 of the Coastal Act. Although, staff is not required to address Chapter 3 inconsistencies when seeking a Cease and Desist Order, information regarding Chapter 3 policies as they pertain to this unpermitted development is provided as background.

1. Development Requiring a Coastal Development Permit Occurred at the Subject Property

Development is defined in Coastal Act Section 30106 as:

“Development” means, on land, in or under water, the placement or erection of any solid material or structure; discharge or disposal of any dredged material or of any gaseous, liquid, solid, or thermal waste; grading, removing, dredging, mining, or extraction of any materials; change in the density or intensity of use of land, including, but not limited to, subdivision pursuant to the Subdivision Map Act (commencing with Section 66410 of the Government Code), and any other division of land, including lot splits, except where the land division is brought about in connection with the purchase of such land by a public agency for public recreational use... (emphasis added)

Placement or erection of a rock revetment and grading of the sandy beach seaward of the residence clearly constitute development under Section 30160.

Once development has been identified, Section 30600(a) provides:

(a) Except as provided in subdivision (e), and in addition to obtaining any other permit required by law from any local government or from any state, regional, or local agency, any person, as defined in Section 21066, wishing to perform or undertake any development in the coastal zone... shall obtain a coastal development permit.

The development at the subject property required a CDP under Section 30600(a). The Homayuns did not apply for or obtain a permit from the Commission or from the City of Malibu. Additionally, no exemption to the permit requirement applies to the development. Therefore, the cited development on the subject property constitutes unpermitted development. Section 30810(a)(1) authorizes the Commission to issue the proposed Cease and Desist Order to address this unpermitted development.

In addition to undertaking unpermitted development activity at the subject property, Michael Homayun hired a contractor to use mechanized equipment, without a CDP or other authorization, to grade the sandy beach seaward of the residence, place large rocks in the resulting trench, and back-fill the sand. The use of such equipment impacted the sandy beach in front of the residence and is inconsistent with the Commission’s regulations regarding the use of mechanized equipment.

The revetment has the potential to cause scouring of neighboring properties due to erosion at the ends of the revetment, and may impact sand movement and sand supply within a larger area of the coast. The rocks in front of the Homayun residence were buried to an undefined depth. Therefore, until Commission-approved removal efforts begin, although the revetment will impact the beach, the extent of this impact is unknown. Consequently, staff recommends that CCC-05-CD-06 direct the Homayuns to remove the revetment in accordance with the terms and conditions of the Order and to undertake restorative grading to return the sandy beach to the grade that existed prior to the cited unpermitted development activities.

2. Development is Inconsistent with Existing Coastal Development Permit No. 5-88-794

Coastal Act Section 30810(a)(2) authorizes the Commission to issue a cease and desist order if development is undertaken that is inconsistent with a previously-issued CDP. Here, the unpermitted development undertaken at the subject property is inconsistent with the special conditions of CDP No. 5-88-794, as described below, which was issued by the Commission on December 1, 1988. The permit runs with the land, binding Sepideh Homayun as a successor owner of the subject property.

The unpermitted development is inconsistent with several of the special conditions of CDP no. 5-88-794:

a. Special Condition 7 – Future Improvements:

Prior to transmittal of the Coastal Development Permit the applicant shall provide a deed restriction for recording...which provides that Coastal Development Permit 5-88-794 is for the approved development only, and that any future additions or improvements to the property will require a Coastal Development Permit from the Coastal Commission or it's successor agency.

The document should note that no permanent improvements with the exception of one public path or stairway noted on the present plans shall be constructed within the geologic set back area or under the floors or seaward of the existing structures.

The deed restriction shall run with the land, binding all successors and assigns. ... It shall remain in effect for the life of the development approved in this permit.

As stated above, the previous owner recorded a joint deed restriction, satisfying the requirements of Special Conditions 1 and 7. The deed restriction runs with the land and binds Sepideh Homayun, as a successor owner. The Homayuns did not obtain additional CDPs for the cited development, in violation of the deed restriction and of Special Condition 7.

As explained above, the residence authorized by CDP No. 5-88-794 was never built and that the Homayun residence was constructed pursuant to CDP No. 4-97-168. However, in addition to the fact that both the deed restriction and CDP No. 5-88-794 run with the land and are perpetual in nature, CDP No. 4-97-168 specifically incorporated Special Condition 7. Therefore, the Homayun residence is an "existing structure" for purposes of Special Condition 7 and this report.

b. Special Condition 8 – No Beach Level Development:

Prior to issuance the applicant shall agree that this approval is based upon his assertions that no beach development, including leachfields or seawalls will be necessary to protect the development.

The Commission's findings for CDP No. 5-88-794 express concerns regarding the stability of the artificial fill slope that was chosen as the location of the proposed development, citing exposure to wave action and susceptibility to erosion from storms such as the 1988 storm that caused an eight-foot recession of the bluff at issue (**Exhibit 19**). These findings specifically mentioned revetments, expressing a concern that such a large parcel could require 200 feet of revetments to protect the residences if they were not engineered to withstand wave action and storms ("the whole beach will be occupied by the revetments"⁵). Due to these concerns, the Commission attached the Special Condition discussed above as well as Special Condition 5 to ensure that the development was designed to withstand hazardous conditions without the use of protective structures.

The Homayuns assert that the revetment was constructed in order to protect their residence from wave action generated during heavy storms. However, the residence was built on caissons that are anchored in bedrock, and according to the Commission-approved elevation and setback standards set in CDP No. 4-97-168, specifically to comply with the permit and to obviate the need for any revetments or other shoreline protection. Moreover, the Homayuns are bound by Special Condition 8, which provided that no protective structures would be needed to shield the residence from wave action.

3. Development is Inconsistent with Existing Coastal Development Permit No. 4-97-168-A2

As discussed above, CDP No. 4-97-168-A2, as amended on April 12, 2002, incorporated the special conditions of CDP No. 5-88-794 by reference and included a provision (labeled "Note") confirming that the conditions remained in effect. The permit also included a special condition prohibiting the construction of shoreline protection devices and required the recordation of a deed restriction to that effect.

The recorded deed restriction and permit conditions run with the land, bind Sepideh Homayun as a successor owner of the subject property, and serve as legal notice that the construction of shoreline protective devices on the subject property are prohibited.

⁵ See *Staff Report*, prepared for CDP No. 5-88-794, dated 11/29/88, at page 23.

Michael Homayun asserts that due to concern about the structural integrity of the residence, he authorized the construction of the revetment, a shoreline protection device. In addition to being unpermitted development, this development clearly violated CDP No. 4-97-168-A2 and the deed restriction recorded pursuant to the permit.

4. Development is Inconsistent with Policies of Chapter 3 of the Coastal Act

The Commission may issue a cease and desist order under Section 30810 of the Coastal Act solely based on a finding that unpermitted development occurred at the subject property. Although a showing of inconsistency with Chapter 3 of the Coastal Act is not required under Section 30810, staff provides this section as background.

a. Section 30235 – Construction Altering Natural Shoreline

Section 30235 states in relevant part:

Revetments, ... and other such construction that alters natural shoreline processes shall be permitted when required to serve coastal dependent uses or to protect existing structures or public beaches in danger from erosion, and when designed to eliminate or mitigate adverse impacts on local shoreline supply.

The residence is built on caissons and is specifically designed to not need shoreline protection. Additionally, the revetment was not designed to eliminate or mitigate adverse impacts on local shoreline supply. In fact, the scouring effects of the revetment may actually increase beach erosion seaward of the revetment and at either end of the revetment. Furthermore, mechanized equipment was used to grade the beach and bury the lower portion of the revetment in the sand to an undetermined depth. Thus, the revetment is a static structure placed within a dynamic environment and will likely adversely impact sand movement and supply.

b. Section 30251 – Scenic and Visual Qualities

Section 30251 states:

The scenic and visual qualities of coastal areas shall be considered and protected as a resource of public importance. Permitted development shall be sited and designed to protect views to and along the ocean and scenic coastal areas, to minimize the alteration of natural land forms....

Grading the beach and constructing the revetment altered the beach in front of the subject property. The continued presence of the revetment will likely cause erosion at the ends of the revetment and may impede natural sand movement and supply, continually altering the beach. Furthermore, scouring of the area seaward of the revetment may cause continuing resource damage to the public beach that extends from the mean high tide line to the ocean, thereby decreasing the public's enjoyment of the beach. Even if the rocks are currently not visible,

additional adverse visual and public access impacts will result if wave action uncovers the allegedly buried rocks. The public will have to step over or around the revetment.

c. Section 30253 – Minimization of Adverse Impacts, Assure Stability and Structural Integrity

Section 30253 states:

New Development shall:

...

2) Assure stability and structural integrity, and neither create nor contribute significantly to erosion, geologic instability, or destruction of the site or surrounding area or in any way require the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs.

Grading of the beach and construction of the revetment are inconsistent with Section 30253 for the same reasons discussed above with regards to Section 30235: the development increases erosion and impedes natural movement of sand on the beach seaward of the residence and in surrounding areas. Erosion of surrounding properties may lead neighboring property owners to construct seawalls or revetments. In fact, it was in order to comply with this Coastal Act provision that CDP No. 4-97-168 required the residence on the subject property to be built in such a way that construction of protective devices, such as the revetment, that substantially alter the sandy beach in front of the residence, would not be necessary. This concept is also reflected in Special Condition 8 of CDP No. 5-88-794, which required assurances that no such shoreline protection devices would be necessary.

5. Provisions of Cease and Desist Order CCC-05-CD-06

The Homayuns arranged for the use of mechanized equipment to dig a trench on the beach and to bury rocks in the trench to an unknown depth. In an effort to adequately address the potential impacts to the beach and ocean from removal of the revetment, the Executive Director issued ED-05-CD-02 and directed Sepideh Homayun not to remove the revetment until authorized by the Commission, so as to ensure that removal is done in conformity with the policies of Chapter 3 of the Coastal Act. Staff recommends that the Commission issue CCC-05-CD-06 to facilitate appropriate removal of the revetment and restoration of the site.

Therefore, CCC-05-CD-06 requires the submittal of a removal plan, for approval by the Executive Director, before removal can commence. This plan will include provisions regulating the use of mechanized equipment, providing a contingency plan for potential release of toxic substances from the equipment, addressing water quality issues, determining a location for the removed materials, and providing a contingency plan for the potential removal of liners and other unknown materials from the trench. The purpose of the removal plan is to ensure protection of natural resources and conformity of removal and restoration activities with the policies of Chapter 3 of the Coastal Act. The plan will ensure that removal is conducted in a way that minimizes adverse impacts to water quality, as required by Sections 30230 and 30231, and

minimizes interference with public use and enjoyment of the beach, as required by Sections 30210, 30211, and 30251.

E. Basis for Recordation of Notice of Violation

1. A Violation of the Coastal Act Has Occurred

The cited development, described in Section C above, constitutes development as defined in Coastal Act Section 30106 and requires a CDP pursuant to Coastal Act Section 30600. The Homayuns did not obtain a CDP to authorize any of the cited development. Therefore, it constitutes unpermitted development, in violation of Coastal Act Section 30600. In addition, the unpermitted development is inconsistent with Coastal Act Sections 30235, 30251, and 30253.

2. All Existing Administrative Methods of Resolving the Violation Have Been Exhausted and the Homayuns Have Been Made Aware of the Potential for Recordation

Coastal Act Section 30812(g) provides:

(g) The executive director may not invoke the procedures of this section until all existing administrative methods for resolving the violation have been utilized and the property owner has been made aware of the potential for the recordation of a notice of violation. For purposes of this subdivision, existing methods for resolving the violation do not include the commencement of an administrative or judicial proceeding.

On March 4, 2005, the Executive Director notified the Homayuns of the potential for recordation of a Notice of Violation in this matter, as required under Section 30812(g). On March 15, 2005, the Executive Director notified the Homayuns of his intent to record a Notice of Violation and provided them with an opportunity to submit a written objection to such recordation. The Homayuns submitted a written objection to the recordation of a Notice of Violation on April 4, 2005. The Homayuns have been notified that the hearing on this matter will accompany the hearing regarding CCC-05-CD-06.

As discussed above, staff made repeated attempts to resolve this matter administratively. Unfortunately, these attempts proved unsuccessful. Staff concludes that all existing administrative methods for resolving the violation have been utilized, as required under Section 30812(g).

3. Rescission of the Notice of Violation

After recordation of the Notice of Violation, if the Homayuns resolve the violation and remove the unpermitted development from the subject property in accordance with the terms and conditions of CCC-05-CD-06, the Executive Director shall record a notice of rescission of the Notice of Violation, pursuant to Section 30812(f).

F. California Environmental Quality Act (CEQA)

The Commission finds that the issuance of CCC-05-CD-06 to compel compliance with the Coastal Act and to remove unpermitted development is exempt from any applicable requirements of the California Environmental Quality Act of 1970 (CEQA) and will not have any significant adverse effects on the environment, within the meaning of CEQA. The Order is exempt from the requirements for the preparation of an Environmental Impact Report, based on Sections 15060(c)(2), 15061(b)(2), 15037, 15038, and 15321 of the CEQA Guidelines.

G. Findings of Fact

1. Sepideh Homayun is the owner of property located at 26520 Latigo Shore Drive in Malibu, Los Angeles County. Michael Homayun is her husband.
2. Michael Homayun undertook activities on the subject property that constitute development as defined in Coastal Act Section 30106.
3. Michael Homayun undertook this development without obtaining a coastal development permit.
4. On March 3, 2005, Commission staff confirmed that mechanized equipment was used to grade the beach and to construct a rock revetment on the beach seaward of the Homayun residence.
5. The Homayuns did not apply for or obtain an emergency permit to grade the beach and construct the revetment from either the Commission or the City of Malibu.
6. On March 4, 2005, the Executive Director issued a Notice of Intent to Issue an Executive Cease and Desist Order (“EDCDO NOI”) to Sepideh Homayun. Mrs. Homayun did not respond to the EDCDO NOI in a “satisfactory manner” as required by Coastal Act Section 30809(b) and as defined by Section 13180(a) of the Commission’s regulations. The Executive Director then issued an Executive Cease and Desist Order (“EDCDO”), requiring Mrs. Homayun to 1) immediately cease from further unpermitted development activity, 2) immediately cease from maintaining unpermitted development on the property or on adjacent properties, and 3) immediately contact the Commission to discuss removal of the revetment and site restoration.
7. On March 15, 2005, the Executive Director issued a Notice of Intent to Record a Notice of Violation and to Commence Cease and Desist Order and Restoration Order Proceedings (“CDO NOI”) to Sepideh Homayun, to address the grading of the beach and the construction of the rock revetment. The Executive Director issued a separate CDO NOI to Michael Homayun on April 8, 2005.
8. Alan Block contacted Commission staff on March 18, 2005 to confirm that he had been retained to represent the Homayuns in this matter, and that the Homayuns had ceased all development activities at the subject property. Commission staff advised Mr. Block that a

Commission-approved cease and desist order was necessary to facilitate appropriate removal and restoration.

9. Substantial evidence exists that violations of the Coastal Act have occurred.

10. Through his March 15, 2005 letter, the Executive Director made the Homayuns aware of his intent to record a Notice of Violation. On April 4, 2005, Mr. Block submitted a written objection to such recordation on behalf of the Homayuns. Commission staff attempted to resolve the violation administratively, but was unsuccessful.

11. All of the unpermitted development listed in the CDO NOI and addressed in this report (grading of the beach and construction of rock revetment) remains on Sepideh Homayun's property.

12. Coastal Act Section 30810 authorizes the Commission to issue a cease and desist order after holding a public hearing, and Coastal Act Section 30812 authorizes the Executive Director to record a notice of violation after holding a public hearing.

H. Respondents' Defenses and Commission Staff's Response

On April 13, 2005, Mr. Block submitted a joint Statement of Defense ("SOD") on behalf of Sepideh and Michael Homayun. The following paragraphs present the Homayuns' defenses and the Commission staff's response to those statements.

1. Homayun's Defense:

The Homayuns deny that their residence was constructed pursuant to CDP No. 5-88-794, but rather constructed pursuant to CDP No. 4-97-168.

Response:

The Homayuns are bound by the terms and conditions of both permits. The Homayun residence was constructed pursuant to CDP No. 4-97-168, and the Homayuns are bound by the terms and conditions of the amended version of this permit, CDP No. 4-97-168-A2. However, the subdivision that created the subject property was authorized by CDP No. 5-88-794, which states:

These terms and conditions shall be perpetual, and it is the intention of the Commission and the permittee to bind all future owners and possessors of the subject property to the term and conditions.

Therefore, Sepideh Homayun is bound, as a successor owner of the subject property, to the terms and conditions of CDP No. 5-88-794 as well as CDP No. 4-97-168-A2. Furthermore, CDP No. 4-97-168-A2 incorporates CDP No. 5-88-794 by reference, stating that the special conditions of the later permit "remain in effect" and attaching CDP No. 5-88-794 as an exhibit for reference.

Moreover, when CDP No. 4-97-168 was amended on April 11, 2002, a special condition was added that prohibited the construction of shoreline protective devices. On March 25, 2002, the previous owner recorded a deed restriction, incorporating this special condition. The deed restriction runs with the land, binds Sepideh Homayun as a successor owner of the subject property, and serves as legal notice that the construction of shoreline protection on the subject property is prohibited.

2. Homayun's Defense:

The Homayuns deny that they constructed a rock revetment on their property. Only 6-8 rocks were placed on their property prior to the receipt of the Commission's Notice of Intent to Issue Executive Cease and Desist Order on March 4, 2005.

A visit to the Homayun property on April 4, 2005, evidenced that the rocks placed on the property were not visible on the beach seaward of their residence. In addition, the beach profile on the Homayun property was identical to the beach profile on the immediately adjacent properties...

The beach elevation only changes visually, as well as topographically, at the Kelley property.

Response:

A coastal revetment is not characterized by a certain number of rocks, but rather by the placement of rocks on the beach for the purpose of shoreline protection. In any event, whether or not the term "revetment" is utilized to describe the activities undertaken at the subject property, the activities still constitute unpermitted development, and therefore violate both the Coastal Act and the terms and conditions of CDP No.s 5-88-794 and 4-97-168-A2. The use of any shoreline protection device on the subject property is prohibited under CDP No. 4-97-168-A2 and any other development on the sandy beach requires a CDP under the Coastal Act. The Homayuns admit that the rocks were placed in a trench on the beach in front of their residence to protect their residence without a CDP.

The fact that the rocks are not currently visible on the beach is not conclusive evidence that the rocks are no longer there or that they are no longer causing adverse impacts. In fact, since there is no evidence that the rocks were removed from the property, the rocks are most likely buried under the sand, rendering removal more difficult and increasing the potential for impacts to the sandy beach from removal. Regardless of whether or not the development is visible at any given time, the Commission is authorized to issue a cease and desist order pursuant to Coastal Act Section 30810(a) to remove the unpermitted development and resolve the matter. In this case, the Order will serve to facilitate appropriate removal of the revetment and restoration of the site.

3. Homayun's Defense:

The Homayuns deny that they brought mechanical equipment onto the beach. Said equipment was already on the beach and was being used at the Kelley residence...

Response:

The Homayuns admit that Michael Homayun authorized the use of mechanized equipment on the beach in front of the residence. Whether the Homayuns brought the equipment to the beach is irrelevant. The Commission does not assert that the Homayuns transported the mechanized equipment to the beach. The use of mechanized equipment on the beach is cited in this report as the means used to facilitate unpermitted development, and presumably the means that will be employed to remove the development. The unpermitted development is the violation of the Coastal Act.

4. Homayun's Defense:

The Homayuns deny that the repair and maintenance activities on their property were [sic] inconsistent with CDP No. 5-88-794. Rather, the Homayuns believed that the repair and maintenance activities were necessary as a temporary emergency measure to protect their property and residence.

Response:

The grading of the beach and construction of the revetment occurred seaward of the residence and therefore do not constitute repair and maintenance of the residence. Moreover, there is no evidence that the revetment was necessary to protect the existing residence. In addition, the development did not repair or maintain an existing, permitted revetment. Thus, staff interprets this portion of the Statement of Defense to imply that the development was undertaken to repair and maintain the artificial bluff in front of the residence. The residence was constructed on caissons in anticipation of the erosion of the slope. Both CDP No. 5-88-794 and No. 4-97-168-A2 specifically prohibit shoreline protective devices. No exception is made in either permit to allow for "repair and maintenance" of the artificial fill slope.

Even if the development constituted repair and maintenance, a coastal development permit would be required under Coastal Act Section 30610(d), which states that repair and maintenance activities require a permit if the activities involve a risk of substantial adverse impact. The following types of repair and maintenance, as defined in Section 13252(3), involves such a risk:

Any repair or maintenance to facilities or structures or work located in an environmentally sensitive habitat area, any sand area, within 50 feet of the edge of a coastal bluff or environmentally sensitive habitat area, or within 20 feet of coastal waters or streams that include:

(A) The placement or removal, whether temporary or permanent, of rip-rap, rocks, sand or other beach materials or any other forms of solid materials;

(B) The presence, whether temporary or permanent, of mechanized equipment or construction materials (emphasis added).

Here, the grading and construction of the revetment took place on a sandy area, involved the placement of rocks, and required the presence of mechanized equipment. Therefore, the development requires a coastal development permit under Coastal Act Section 30610(d) and Section 13252(3) of the Commission's regulations.

The Homayuns also assert that the revetment was constructed as a temporary emergency measure. Photographs of the site taken on March 3, 2005 show mechanized equipment on the beach digging trenches and placing rocks in the trenches. This work does not appear temporary in nature. Even if the revetment was intended as a temporary emergency measure, the Homayuns did not follow the procedures for undertaking such development and neither applied for nor obtained an emergency permit from the Commission or the City of Malibu.

Procedures Used by Commission to Issue Emergency Permits:

Coastal Act Section 30624 authorizes the Executive Director to issue emergency permits, in accordance with the procedures and criteria set forth in Section 13136 et seq. of the Commission's regulations. Section 13138 requires the submittal of applications for emergency permits to the Executive Director by letter or facsimile, and by telephone or in person if time does not allow. The Homayuns did not submit an application by mail or facsimile to the Commission, did not contact staff by telephone, and did not appear in person to apply for an emergency permit.

Procedures Used by the City of Malibu to Issue Emergency Permits:

Even assuming that the Homayuns could have alternatively obtained an emergency permit for the development from the City of Malibu, no such permit was applied for or obtained. The procedures for obtaining a permit from the City of Malibu are set forth in Section 13329 et seq. of the Commission's regulations and Section 13.14 of the City of Malibu Local Coastal Program Implementation Plan. Section 13329.1 requires the submittal of applications for emergency permits to the appropriate local official by mail or facsimile. Alternatively, applications may be made over the telephone or in person, if time does not allow for a written submittal.

Section 13.14 of the Malibu LCP IP states that applications for emergency permits must be submitted, by any of the means described in Section 13329.1, to the Planning Director (**Exhibit 20**). To issue an emergency permit, the Director must find that an emergency exists, as defined in Chapter 2.1 of the Malibu LCP IP as: "a sudden unexpected occurrence, demanding immediate action to prevent or mitigate loss or damage to life, health, property or essential public services"⁶.

⁶ See *City of Malibu Local Coastal Program, Local Implementation Plan*, dated September 13, 2002, at page 10.

The Homayuns did not submit an application and did not obtain a permit from the City of Malibu. Furthermore, even if they had, under these facts, an emergency did not exist as defined in the Malibu LCP IP, due to the fact that the residence was built to withstand severe storms.

5. Homayun's Defense:

The Homayuns were informed by both Bert Kelley and Gene Densen, and in good faith believed, that Mr. Densen had had conversations with City of Malibu Department of Building and Safety personnel [Craig George] ... and had been advised that emergency measures could be undertaken to protect their residences as long as a subsequent application for an emergency CDP was made to the City.

Response:

The actions taken by the Homayuns constituted a violation of the conditions of CDP No. 4-97-168. However, even if they could have received an emergency permit, the Homayuns did not apply for or obtain a coastal development permit, as stated in staff's response to statement # 4 above.

The Homayuns did not contact Commission staff or the City of Malibu, but instead apparently relied on Mr. Kelley and Mr. Densen, the contractor who allegedly facilitated the grading and construction of the revetment, for assurances that the "emergency development" was allowed without prior authorization from a CDP. The Homayuns did not contact staff or officials at the City of Malibu until preparing for these proceedings. Regardless of the potentially incorrect information received by the Homayuns from third parties, the Homayuns are responsible for complying with Coastal Act requirements with regards to their property. The deed restrictions recorded pursuant to existing CDPs put the Homayuns on notice that shoreline protective structures were prohibited and any other development required a CDP.

Even if Mr. George orally endorsed undertaking emergency development without prior permit authorization, his statements are irrelevant, because under the Malibu Local Coastal Program, a written application and a written permit is issued. It was the Homayuns' responsibility to secure the appropriate authorization to conduct development on their property. Furthermore, the City could not issue an emergency permit for the revetment because such a permit would conflict with the conditions of existing permits and the deed restrictions recorded pursuant to these permits.

In their response to this proceeding, the Homayuns submitted a letter from Craig George, Environmental and Building Safety Division Manager for the City of Malibu, dated April 13, 2005. In his letter, Mr. George states that he does not recall receiving a call from Mr. Kelley or Mr. Densen. He also states that, "the City may authorize the issuance of emergency EDCP for temporary rock revetment" and outlines the showing that is required when a property owner applies for such a permit. However, as already noted, the Homayuns did not comply with the required steps, as outlined in Mr. George's letter: the Homayuns did not apply for a permit, did not make the required showing, and did not obtain an emergency permit. Moreover, Mr.

George's letter does not in any way substantiate the Homayuns claim that the City misinformed Mr. Densen as to the applicable rules governing emergency action.

6. Homayun's Defense:

[A]s soon as Mr. Densen had completed the placement of the rocks in front of my residence I would have submitted an application to the City of Malibu for a temporary emergency CDP (from Declaration of Michael Homayun, included in Exhibit 17.)

I thereafter spoke with Mr. Lamport ... and he also told me that the Coastal Commission told him that we should not apply to the City of Malibu for an emergency Coastal Development Permit. Based on Mr. Lamport's representation I did not apply to the City for the emergency permit (from Declaration of Michael Homayun, included in Exhibit 17).

Response:

As discussed above, the actions taken by the Homayuns constituted a violation of CDP No. 4-97-168. However, even if the Commission would have issued an emergency permit for the actions taken by the Homayuns, the Homayuns did not apply for or obtain a permit. The Homayuns state that, but for advice from Mr. Lamport, they would have applied for an emergency permit after the development was completed. An emergency permit application is required *prior* to undertaking the unpermitted development. Pursuant to Sections 13138 and 13329.1(a) of the Commission's regulations, the application may be provided to Commission staff or local government officials in person or by telephone, if time does not allow for the submittal of a written application. The Homayuns did not submit any form of application.

It appears that staff's comments to the Homayuns may not have been correctly relayed. At the time of the Homayuns conversation with Mr. Lamport, staff had determined that the unpermitted development on the subject property had not been permitted, and in fact, was inconsistent with the Coastal Act and existing permit conditions. Thus, staff had begun enforcement action to resolve the violation at the subject property. Regardless of whether the Homayuns would have applied for a permit after the development was completed, the development was undertaken without *prior* coastal development permit authorization and constitutes a violation of the Coastal Act.

7. Homayun's Defense:

The Homayuns deny that their repair and maintenance activities were inconsistent with any of the following: ... Section 30235, in that placement of the 6-8 rocks on that portion of their property immediately adjacent to the lost slope will not prevent natural shoreline alteration; Section 30251, in that placement of the 6-8 rocks on their property does not obstruct the scenic and visual qualities of the area; and/or Section 30253(2), in that placement of the 6-8 rocks on their property will not have adverse impacts on and/or cause landform alteration.

Response:

Section D.4 of this report explains why the unpermitted development is inconsistent with these Chapter 3 policies. However, regardless of whether grading the beach and constructing the revetment were inconsistent with these Chapter 3 policies, the activities constitute development and clearly required a CDP. No CDP was applied for or obtained. Additionally, the development conflicts with conditions of existing CDPs and deed restrictions recorded pursuant to the CDPs. Therefore, the Commission may issue a cease and desist order directing the Homayuns to remove the development and restore the site.

8. Homayun's Defense:

The Homayuns were legitimately concerned in good faith about the structural integrity of their residence and their own safety.

Commission's Response:

Staff does not refute the Homayuns' concern for their property. Nevertheless, the Homayuns should have followed the emergency procedures provided by the Coastal Act, the Commission's regulations, and the City of Malibu Local Coastal Program, which facilitate review of proposed development in emergency situations to ensure that development proposed during often chaotic and unexpected emergency situations conforms to the policies of Chapter 3 of the Coastal Act. In addition, the deed restriction that prohibits shoreline protective devices still applies and is in effect.

Staff recommends that the Commission issue the following Cease and Desist Order:

CEASE AND DESIST ORDER CCC-05-CD-06, HOMAYUN

I. GENERAL PROVISION

Pursuant to its authority under Public Resource Code Section 30810, the California Coastal Commission hereby orders and authorizes Sepideh Homayun and Michael Homayun (hereinafter referred to as “Respondents”) to:

- A. Cease and desist from engaging in any further development on the subject property not authorized by a coastal development permit.
- B. Cease and desist from maintaining unpermitted development on the subject property, including but not limited to grading (cut and fill) of the beach and the rock revetment.
- C. Cease and desist from engaging in any further development on the subject property that violates Coastal Development Permits No. 5-88-794 and No. 4-97-168-A2.
- D. Within 20 days of the issuance of this Order, submit a plan to the Executive Director for approval, governing the removal of the rock revetment and the restoration of the site to its pre-violation condition.

The removal plan should provide for:

- 1. Restorative grading of the sandy beach;
- 2. Appropriate operation of mechanized equipment necessary to complete removal and restoration work, including but not limited to the following:
 - a. Hours of operation of mechanized equipment shall be limited to weekdays between sunrise and sunset, excluding the Memorial Day and Fourth of July Holidays;
 - b. Equipment shall be stored in an approved location inland from the beach when not in use;
 - c. A contingency plan shall be established in case of a spill of fuel or other hazardous release from use of mechanized equipment, addressing clean-up and disposal of the hazardous materials and water quality concerns.
- 3. Revetment materials and any imported fill materials shall be disposed of at a Commission-approved location outside of the Coastal Zone. If a disposal location within the Coastal Zone is selected, a coastal development permit will be required.

4. Liners and other imported materials shall be disposed of at a Commission-approved location outside of the Coastal Zone. If a disposal location within the Coastal Zone is selected, a coastal development permit will be required. Any hazardous materials shall be disposed of according to the contingency plan provided in D.2.c.
 5. Measures to protect against impacts to water quality from removal and restorative grading shall be provided.
- E. If the Executive Director determines that any modifications or additions to the submitted plan are necessary, he shall notify the Homayuns. Requested modifications shall be completed and the plan resubmitted by the Homayuns within 10 days of the notification for approval by the Executive Director.
- F. Within 10 days of the approval of the plan by the Executive Director, the Homayuns shall complete removal of the rock revetment and restoration of disturbed areas of the subject property, in accordance with the approved plan and this Order.
- G. Within 10 days of completing the removal of the rock revetment and restoration of disturbed areas of the subject property, in accordance with the approved plan and this Order, the Homayuns shall submit photographic evidence of the completion of the work required under this section to the attention of Christine Chestnut in the Commission's Headquarters office.
- H. All materials submitted pursuant to this Order must be made to the following address:
- | | |
|---|---|
| California Coastal Commission
Attn: Christine Chestnut
45 Fremont Street, Suite 2000
San Francisco, CA 94105-2219
Facsimile: (415) 904-5400 | With a copy submitted to:
California Coastal Commission
South Central Coast District Office
Attn: Pat Veasart
89 S. California Street, Suite 200
Ventura, CA 93001-2810
Facsimile: (805) 641-1732 |
|---|---|

II. Persons Subject to the Order

Persons subject to this Cease and Desist Order are Sepideh Homayun and Michael Homayun, their agents, contractors and employees, and any persons acting in concert with any of the foregoing.

III. Identification of the Property

The property that is subject this Order is described as follows:

A .20-acre parcel located between the seaward side of Latigo Shore Drive and the beach, containing a 3,519 square-foot single-family residence built on an artificial fill slope that fronts an approximately 61 linear foot-long stretch of sandy beach (APN 4460-019-145).

IV. Description of Unpermitted Development

Unpermitted development located on the subject property consists of grading (cut and fill) of the beach and construction of a rock revetment on the beach in front of the residence. In addition, the unpermitted construction of the revetment involved the unpermitted use of mechanized equipment on the beach.

V. Effective Date and Terms of the Order

The effective date of the Order is their date of approval by the Commission. The Order shall remain in effect permanently unless and until modified or rescinded by the Commission.

VI. Findings

The Order is issued on the basis of the findings adopted by the Commission at the May 2005 hearing, as set forth in the attached document entitled "Staff Report and Findings for Notice of Violation and Cease and Desist Order".

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VII. Compliance Obligation

Strict compliance with the Order by all parties subject thereto is required. Failure to comply strictly with any term or condition of the Order including any deadline contained in the Order will constitute a violation of this Order and may result in the imposition of civil penalties of up to SIX THOUSAND DOLLARS (\$6,000) per day for each day in which such compliance failure, in addition to any other penalties authorized under Section 30820.

VIII. Deadlines

The Executive Director may extend deadlines for good cause. Any extension request must be made in writing to the Executive Director and received by Commission staff at least ten days prior to expiration of the subject deadline.

IX. Appeal

Pursuant to Public Resources Code Section 30803(b), any person or entity against whom the order is issued may file a petition with the Superior Court for a stay of this order.

IX. Government Liability

The State of California shall not be liable for injuries or damages to persons or property resulting from acts or omissions by the Homayuns in carrying out activities required and authorized under this Cease and Desist Order, nor shall the State of California be held as a party to any contract entered into by the Homayuns or his agents in carrying out activities pursuant to this Order.

X. Successors and Assigns

This Cease and Desist Order shall run with the land, binding all successors in interest, future owners of the Subject Property, heirs and assigns of the Homayuns. Notice shall be provided to all successors, heirs and assigns of any remaining obligations under this Order.

XI. No Limitation on Authority

Except as expressly provided herein, nothing herein shall limit or restrict the exercise of the Commission's enforcement authority pursuant to Chapter 9 of the Coastal Act, including the authority to require and enforce compliance with this Cease and Desist Order.

Executed in _____ on _____, on behalf
of the California Coastal Commission.

By: _____ Peter Douglas, Executive Director

RECORDING REQUESTED BY:

California Coastal Commission

WHEN RECORDED MAIL TO:

California Coastal Commission
45 Fremont Street, Suite 2000
San Francisco, CA 94105-2219
Attention: Christine Chestnut

[Exempt from recording fee pursuant to Gov. Code § 27383]

DOCUMENT TITLE:

NOTICE OF VIOLATION OF THE COASTAL ACT

Re: Assessor's Parcel No. 4460-019-145

Property Owners:

Sepideh Homayun

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

CALIFORNIA COASTAL COMMISSION
Attention: Christine Chestnut
45 FREMONT STRET, SUITE 2000
SAN FRANCISCO, CA 94105-2219

STATE OF CALIFORNIA OFFICIAL BUSINESS
Document entitled to free recordation
Pursuant to Government Code §27383

NOTICE OF VIOLATION OF THE COASTAL ACT
(Public Resources Code Section §30812)

I, Peter Douglas, declare:

1. I am the Executive Director of the California Coastal Commission.
2. A violation of the California Coastal Act of 1976 (Public Resources Code §3000, et seq.) has occurred on a certain parcel situated in Los Angeles County, California, more particularly described as follows:

One .20-acre parcel located at 26520 Latigo Shore Drive, Malibu, CA 90265 in Los Angeles County (Assessor's Parcel Number 4460-019-145)

Owner of Record: Sepideh Homayun

The violation consists of the undertaking of development activity without the authorization required by the California Coastal Act of 1976.

3. This property is located within the Coastal Zone as that term is defined in Coastal Act Section 30103.
4. The record owner of said real property is: Sepideh Homayun.
5. The violation of the Coastal Act (Violation File No. V-4-02-032) consists of the following unpermitted development: grading (cut and fill) of the beach and construction of a rock revetment on the beach in front of the residence. The requirements set forth in Section 30812 for notice and recordation of this Notice of Violation have been complied with. Recording this notice is authorized under Section 30812 of the California Public Resources Code.

7. The California Coastal Commission notified the record owner, Sepideh Homayun, of its intent to record a Notice of Violation in this matter in a letter dated March 15, 2005.
8. The Commission received a written objection to the recordation of the Notice of Violation on April 4, 2005 and conducted a public hearing. The Commission determined that the unpermitted development on Sepideh Homayun's property constituted a violation of the Coastal Act. Therefore, the Executive Director is recording the Notice of Violation as provided for under Section 30812 of the California Coastal Act.

Executed in _____, California, on _____.

I declare under penalty of perjury that the foregoing is true and correct.

PETER DOUGLAS, Executive Director

STATE OF CALIFORNIA
COUNTY OF SAN FRANCISCO

On this _____ day of _____, in the year _____, before me the undersigned Notary Public, personally appeared Peter Douglas, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person who executed this instrument as Executive Director of the California Coastal Commission and acknowledged to me that the California Coastal Commission executed it.

Notary Public in and for Said State and County

**CCC-05-NOV-04 and CCC-05-CD-06
Exhibit List**

Exhibit Number	Description
1.	Site Map and Location.
2.	Coastal Development Permit No. 5-88-794.
3.	Deed Restriction, with attachments, recorded pursuant to Special Conditions 1 and 7 of CDP No. 5-88-794.
4.	Offer to Dedicate a Lateral Access Easement with attachments recorded December 13, 1989.
5.	Certificate of Acceptance of Lateral Access Easement, recorded by Access for All on September 23, 2004.
6.	Coastal Development Permit No. 4-97-168.
7.	Amendment to Coastal Development Permit No. 4-97-168-A2.
8.	Deed Restriction with attachments recorded pursuant to Special Condition of CDP No. 4-97-168 A2.
9.	Photograph from anonymous source, submitted to staff on March 3, 2005.
10.	Photographs (10a-10c) taken by Commission staff during site visit on March 3, 2005.
11.	EDCDO NOI, with declaration of service, issued on March 4, 2005.
12.	EDCDO, issued on March 4, 2005.
13.	CDO NOI, issued on March 15, 2005.
14.	Amended CDO NOI with cover letter for Sepideh Homayun, issued on April 8, 2005.
15.	CDO NOI with cover letter for Michael Homayun, issued on April 8, 2005.
16.	April 4, 2005 letter from Alan Block, re: objection to recordation of Notice of Violation and confirming extension of deadline to submit Statement of Defense.
17.	April 8, 2005 letter from staff to Alan Block re: extension of deadline to April 12, 2005 in recognition of agreement to submit joint Statement of Defense.
18.	Joint Statement of Defense for Michael and Sepideh Homayun with attachments, dated April 13, 2005.
19.	Staff Report with attachments prepared for Coastal Development Permit No. 5-88-794.
20.	Excerpt from City of Malibu Local Coastal Program Implementation Plan: Chapter 13, Section 13.14.